

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

CP (IB) No.86/BB/2022
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s Poly Pipes India (P) Ltd,
Registered Office at:
Lakshmi Shankara,
95, Dr. Alagappa Road,
Pursawalkam,
Chennai – 600 084.

... Petitioner/Operational Creditor

Versus

M/s MS Retail Private Limited,
Registered Office at:
KCD Complex, Ground Floor,
19/1, 3rd Cross,
CSI Compound,
Bangalore- 560 027.

... Respondent/Corporate Debtor

Order delivered on: 25th May, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner	:	Shri N.P. Vijay Kumar
For the Respondent	:	Shri Abhijit Atur with Shri Srivatsa Rao

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 10.05.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s Poly Pipes India (P) Ltd (for brevity 'Operational

Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. MS Retail Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 2,10,83,462/- (Rupees Two Crores Ten Lakh Eighty-Three Thousand Four Hundred and Sixty-Two Only) comprising of Principal amount of Rs. 1,66,36,809/- along with interest of Rs. 38,14,114.43/- upto date of issuance of demand notice, plus Rs. 6,32,509/- interest from the date of issuance of demand notice till 31.03.2022.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor is a company registered on 20.10.2010 with the Registrar of Companies at Chennai and is into the business of manufacturing and supply of various PVC items. The respondent is a company registered on 10.02.2009 with Registrar of Companies at Bangalore and is into the business of manufacturing and selling PVC fittings.
4. It is submitted that the Respondent approached the Petitioner for supply of goods for which Purchase Orders were raised. Accordingly, Petitioner supplied goods from time to time on various dates and Petitioner raised the invoices for the goods supplied on various dates.
5. However, the Corporate Debtor failed to pay the amount due and payable by the Corporate Debtor towards the goods supplied by the Operational Creditor.
6. Accordingly, on 25.09.2020 the petitioner sent a letter regarding balance outstanding payable by the Respondent and the respondent accepted the balance outstanding amount of Rs. 1,73,79,172/- up to 24.10.2020.
7. Further, the petitioner sent Demand Notices dated 23.12.2021 in Form 3 and 4 to the registered office of the Corporate Debtor, however the respondent failed to make payment of the outstanding dues.
8. It is seen that this Tribunal on 30.09.2022 directed the petitioner to give clarification regarding date of default and the Learned counsel for

the petitioner filed memo vide diary No. 5295 dated 07.12.2022 stating that the date of default is 05.08.2020.

9. The Respondent filed its Objection/Written submission inter alia stating the following.
10. It is submitted that the respondent does not admit default or liability for any of the invoices. Further, the petitioner vide memo dated 07.12.2022 has stated that the date of default is 05.08.2020.
11. It is submitted that as per Section 10A, if a Corporate Debtor has defaulted against a debt during the period on or after 25.03.2020, for a period of six months or such further period as notified by the government of India, no proceedings can be initiated against such a Corporate Debtor before the NCLT for the default that has occurred in the said period. Subsequently by notification issued by the Ministry of Corporate Affairs, the provisions of Section 10A stood extended till 24.03.2021. Hence the Excluded period is from 25.03.2020 to 24.03.2021.
12. Further, the petition has been filed for the purported default committed by the Corporate Debtor in respect of the invoices raised during the period which squarely falls under section 10A of the IBC. Moreover, the petitioner has confirmed that the default date of the purported default is 05.08.2020.
13. Out of a total of 39 invoices raised by the Petitioner, 11 invoices became due for payment outside the Exclusion Period and 28 invoices become due for payment during the Exclusion period. The total value of invoices that become due for payment outside the Exclusion Period is Rs. 3,29,708/- and the total value of the invoices that become due for payment during the Exclusion Period is Rs. 2,07,53,754/- .
14. It is submitted that once the invoices raised during the Excluded Period provided under Section 10A of IBC are excluded from the calculations, the application no longer satisfies the threshold limit of Rs. 1 Crore mentioned in Section 4 of the IBC.
15. The respondent further relied on the decision of Hon'ble NCLAT in the case of “ *Anil Kaushal v Colliers International (India) Property Services Private Limited and Others*, 2022 SCC Online NCLAT 331” wherein it is

held that amount liable to be paid during the period exempted by Section 10A cannot be taken into consideration for crossing the threshold of Rs. 1 crore as per section 4 of the IBC.

16. The learned counsel for the Petitioner filed its rejoinder vide diary No. 926 dated 17.02.2023 and the same is taken on record.
17. Heard both the Counsels and perused the records available. The Petitioner and the respondent filed written submission as directed by this Tribunal on 21.03.2023 and 16.02.2023 vide diary No. 1854 and 901 respectively.
18. The present petition is filed for a total outstanding default of Rs. 2,10,83,462/- . It is observed from the petition that there were a total of 39 invoices raised by the Operational Creditor between 17.04.2019 to 06.06.2020 and invoices fell due between 16.06.2019 to 05.08.2020. The date of default as clarified by the Operational Creditor is 18.10.2020. As per Section 10 A of the IBC, 2016 no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed under section 7, 9, and 10 , for any default arising on or after 25th March, 2020 upto 24th March 2021; in accordance with the period extended by the notification issued by Ministry of Corporate affairs.
19. Out of the 39 invoices, payment in respect of 11 invoices became due between 16.06.2019 to 23.11.2019, which falls outside the exclusion period under section 10A. Further, from the petition it is seen that there is no outstanding amount for invoices which fell due between 16.06.2019 to 23.11.2019, and the only outstanding for this period is Interest and GST on Interest.
20. Further, it is pertinent to note that the 11 invoices which fell outside the excluded period amounted to only Rs. 3,29,708/- (only interest on delayed payment), and the balance amount of Rs. 2,07,53,754/- falls within the exclusion period . The Hon'ble NCLAT in the case of *"Plus Corporate Ventures Pvt. Ltd v Transnational Growth Fund Ltd., order dated 31.10.2022 in Company Appeal (AT) (Insolvency) No. 1270 of 2022"* held that *"when we look into the proviso to Section 10A, the expression is "provided that no application shall ever be filed for*

initiation of CIRP of a Corporate Debtor for the said default occurring during the said period”, thus for default which has been committed from 16.09.2020 to 28.02.2021, no Application could have ever been filed. The appellant’s submission that cumulatively application can be filed taking all amounts, cannot be accepted. The said submissions goes contrary to the statutory scheme delineated by Section 10A proviso as noted above. When the Appellant could not have filed the Application for the default which was committed, the Adjudicating Authority did not commit any error in rejecting the Applications as barred by Section 10A of the Code. In so far as the last two default on 31st March, 2021 and 30th April, 2021 is concerned, the Adjudicating Authority has noticed that the total amount of the aforesaid two defaults is only Rs. 37,50,000/- which is below the threshold as provided under Section 4 of the Code.”

21. Therefore relying on the provisions of section 10A of the Code, and considering the ratio of the NCLAT decision cited above, the Petitioner’s argument is liable to be rejected. The contention in the written submission filed by the applicant on 31.03.2023 is not tenable in law as the Proviso to Section 10A is very clear in this regard. Accordingly since out of the total invoices raised by the petitioner only 11 invoices amounting to Rs. 3,29,708/- fall outside the exclusion period under section 10A; the rest of the invoices cannot be taken into account for the purpose of computation of Threshold amount of Rs. 1 crore; as it is barred by Section 10A. In so far as the 11 invoices are concerned, the total amount of default is below the threshold as provided under Section 4 of the Code.
22. Hence, the present petition CP (IB) No. 86/BB/2022 is hereby **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**